

Cameroon, Dead and Missing Persons

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Boko Haram raids Cameroon army base: Deaths reported as Nigerian armed group targets Kolofata in neighbouring country, forcing many to flee the city

[Source: 'Boko Haram raids Cameroon army base', Al Jazeera, 12 January 2015, available at: <http://www.aljazeera.com/news/africa/2015/01/boko-haram-attacks-cameroon-military-base-2015112133225785766.html>]

[1] Fighters from the Nigerian armed group Boko Haram have launched an attack on a military base in the northwest Cameroonian city of Kolofata, police and government officials say.

[2] "As soon as people heard the first gunfire, they fled the city," a police source told the AFP news agency on Monday, adding: "The gunfire was very heavy."

[3] Issa Tchiroma, Cameroon's communication minister and government spokesperson, told Al Jazeera that between 200 and 300 Boko Haram fighters had been killed in the attack.

[4] He also said Cameroonian soldiers had seized heavy military equipment and vehicles from Boko Haram, apparently during a recent attack by the group on Nigeria's northeastern town of Baga.

[...]

[5] "Kolofata is not very near the border with Nigeria, which means the militants travelled at least 10km into Cameroon," he said.

[...]

B. Cameroon: Authorities fail to shed light on fate of 130 people missing for one year

[Source: Amnesty International, 'Cameroon: Authorities fail to shed light on fate of 130 people missing for one year', Press Release, December 27, 2015, available at: <http://www.amnestyusa.org/news/press-releases/cameroon-authorities-fail-to-shed-light-on-fate-of-130-people-missing-for-one-year>]

[1] The Cameroonian authorities must come clean over the fate of 130 people rounded up and detained by Cameroonian forces a year ago following security operations against Boko Haram, said Amnesty International on the anniversary of their enforced disappearance.

[2] On 27 December 2014, more than 200 boys and men were arrested by security forces in the villages of Magdeme and Doublé. The government claims that 70 suspected Boko Haram members were arrested and that 25 of them had died that night in custody. However, the whereabouts of at least 130 remaining people are still unknown. In the same operation, at least eight people, including a child, were killed, more than 70 buildings were burnt down and many possessions were stolen or destroyed by security forces.

[3] "One year after they went missing, the families of these boys and men are still waiting to discover their fate. They have received no information on their whereabouts. Similarly, the identities of the 25 detainees whom the authorities claim died in a cell at the Gendarmerie HQ in Maroua have not been revealed," said Illaria Allegrozzi, Amnesty International's Central Africa researcher.

[4] "The fight against Boko Haram should not serve as a pretext for enforced disappearances. The families of those who died and those whose fate is still unknown must be informed. Those in secret detention must be given access to their relatives and lawyers and be treated in a humane manner. The incident must be urgently and impartially investigated."

[5] A 51-year-old woman, whose house was also looted and burned down by security forces on 27 December 2014, told Amnesty International that seven of her family members were arrested and driven away in trucks.

[6] "Since that day, I have not seen or heard from my husband, my two sons, my two brothers and my two sons-in-law despite all my efforts to find them. I really need to know whether they are alive. I want them to come back."

[7] In a report published last September, Amnesty International documented how Boko Haram has slaughtered more than 400 civilians in northern Cameroon. As a response the security forces raided villages, destroying homes, killing civilians and detaining more than 1,000 suspects.

[8] The organization has written to the Minister of Defence, Minister of Justice and the Chief of Gendarmerie, among others, providing a list of 130 names of people who were arrested in Magdeme and Doublé requesting them to confirm their whereabouts and inform their families. So far there has been no response.

[9] Amnesty International is calling on the authorities to conduct prompt, independent and impartial investigations into all allegations of crimes under international law and other human rights violations by members of the security forces, and to disclose the identities as well as the place of burial of at least 25 people who died in custody in Maroua.

[10] “The families of the disappeared need to know what has become of their loved ones. The authorities must once and for all put an end to this blatant injustice that has already lasted too long,” said Illaria Allegrozzi.

[11] “The failure to investigate these disappearances by the security forces strengthens the impunity that they enjoy.”

Background

[12] Cameroon’s President has deployed at least 2,000 troops of the Rapid Intervention Battalion alongside forces from the Mobile Intervention Battalion to combat Boko Haram’s violence. The heavy-handed response, by state security forces has led to crimes under international law and human rights violations.

Discussion

I. Classification of the Situation and Applicable Law

1. (*Document A, Paras [1]-[6], Document B, Paras [2] & [12]*) How do you classify the conflict between Cameroon’s forces and Boko Haram? Is it a law enforcement operation or an armed conflict? On what criteria is your determination on classification based? Which criteria have to be fulfilled for a situation to be classified as a non- international armed conflict? Is it sufficient that those criteria are fulfilled in Nigeria or must they also be separately fulfilled in Cameroon? Which set of rules apply in the present case? (GC I-V, Art.3; PII, Art.1)
2. What further information would you need to determine if IHL applies to this situation?
3. Assuming that it qualifies as an armed conflict, does Protocol II apply in this situation? (PII, Art.1)

II. Conduct of hostilities

4. (*Document B, paras. [2] and [7]*)
 - a. Is the destruction of homes necessarily a violation of IHL? (CIHL, Rules 8, 9, 10, and 19; PI Arts 52 and 57)

b. Under what circumstances is the killing of civilians not a violation of IHL? (GC I-IV, Art.3; PII, Arts 4, 13(3), and CIHL, Rule 14)

c. Is pillage a prohibited act under IHL of non-international law? (PII, Art.4 (2) (g); CIHL, Rule 52)

III. The missing and the dead

5. (*Document B, para. [1]*) What do you understand by the term “enforced disappearance”? Does it cover the same category of persons as the term missing persons in IHL? Are enforced disappearances governed only by IHRL? When could IHL rules be said to apply to enforced disappearances? What rules of IHL would you invoke to prevent enforced disappearances? Does the IHL of non-international armed conflict provide rules on missing persons? (PII, Art.8; PI, Art.33(1); CIHL, Rules 89, 98, 99, 105, 117, 123, 124 and 125; Art.17 (3) International Convention for the Protection of all Persons from Enforced Disappearance)

6. (*Paras [1], [3] and [8]*) Does Cameroon have an obligation to clarify the fate and whereabouts of persons, and to account for missing persons under IHL of non-international armed conflict? Under IHRL? Is an obligation to record personal details of persons deprived of their liberty a norm of customary international law applicable in NIACs? (CIHL, Rules 117 and 123; Article 24(2) International Convention for the Protection of all Persons from Enforced Disappearance)

7. (*Para. [7]*) During non-international armed conflicts, which body of law i.e. IHL or IHRL should regulate the detention of fighters?

8. (*Para. [1]*) Does the IHL of non-international armed conflict provide rules as to the grounds for detention and conditions under which a person may be interned? When the rules provided by the IHL of non-international armed conflict, if any, are insufficient, which provisions should be applied to regulate a situation? Should the rules of the IHL of international armed conflict apply by analogy, or should human rights law apply instead? Should one follow the principle of *lex specialis*? What would this principle imply? Do the answers to these questions matter in the present case?

9. (*Paras [3], [4], [6] and [10]*) Does IHL of non-international armed conflict provide for right of the family to know the fate of their relatives? Can we use the rules under IAC by analogy? Does it make any difference if we use IHRL rules on missing enforced disappearance and right of the family? (PI Arts.32-34; Arts. 17 (3) and 24(2) International Convention for the Protection of all Persons from Enforced Disappearance).

10. Does the ICRC have a role with regard to missing persons in non-international armed conflict? (CIHL, Art.124 (B))

11. (*Para. [2] and [9]*) Does IHL of non-international armed conflict regulate death of detainee in custody? IHRL? What is the nature of the obligation on the detaining power? Does it constitute a war crime? (GC I-V, common Art.3; PII Art.4 (2) (a); Art. 8 (2) (c) (i), Statue of the ICC)

12. (*Para. [9]*)

a. Does a state have obligations to investigate every violation of IHL of non-international armed conflict? Only allegations of war crimes? Does the obligation to investigate exist in the present case? Does a state have to make the results of their investigations public? (CIHL, Rule 158)

b. Does IHL of non-international law oblige parties to identify the dead and mark the location of their graves? (CIHL, Rules 115 and 116)